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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Implementation of the
Cable Television Consumer
Protection and Competition
Act of 1992

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MM Docket No. 92-260

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) is the principal trade association of local telephone companies. USTA respectfully submits these comments on the Commission's Notice of Proposed Rulemaking in this proceeding, released November 6, 1992 (Notice). In the Notice, the Commission asks for comment on the implementation of Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992, P.L. No. 102-385, 102 Stat. ____ (1992) (Cable Act of 1992). The Commission is required to prescribe rules regarding cable home wiring by February 2, 1993. Notice at ¶1. The fact that this is "home" wiring makes this issue unique.

The Cable Act of 1992 requires the Commission to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber." The Commission reads the legislative history as favoring rules that enable the subscriber to acquire cable home wiring upon termination of service, but intends to balance this with any

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property rights of cable operators. Notice at ¶2. The Commission also seeks comment to tailor rules to different settings (Notice at ¶3), to address termination based on nonpayment or theft of service (Notice at ¶4), to assess the implications for state property and taxation law (Notice at ¶5), and to examine signal leakage risks (Notice at ¶6).

I. THE COMMISSION SHOULD ENCOURAGE COMPETITIVE POLICIES.

A substantial amount of the telecommunications future is now perceived to lie in broadband services. The Commission should commit itself here to maximize the procompetitive implications of its inside wire policies as premises wiring moves more to broadband services, and to be consistent in the application of such policies. The Commission should favor a deregulated competitive cable home wiring market that applies cost causation principles and is consistent across the home access continuum.

Even before the passage of the Cable Act of 1992, "free market" installation of additional outlets allowing subscribers to receive cable television service on additional televisions within a subscriber's premises was increasingly favored. It was viewed as more consistent with the general procompetitive approach of the 1984 Cable Act than the policies perpetuated by many cable operators, who insisted that only they could perform additional wiring in the home, and that additional consumer connections would require continuing additional fees. See,

most recently, *Manhattan Cable Television, Inc., v. Cable Doctor, Inc.*, 61 LW 2261, No. 92 CIV 2888 (MEL) (S.D.N.Y., Oct. 8, 1992). In that case, the court rejected attempts by a cable operator to prevent competition in home wire installation, and rejected that operator's arguments that the second set constituted an unlawful "interception" of cable service.

A. Consumers Should Be Able To Provide Their Own Cable Wiring.

The Commission should build on the ever-growing recognition that there should not be restraints on the connection of beneficial subscriber-specific devices for enhancing cable television services. The rule of *Carterphone* and *Hush-a-Phone* has many analogies in cable television, as privately beneficial connections that are not detrimental to other cable subscribers can be installed within a home. See *Hush-a-Phone Corp. v. U.S.*, 238 F.2d 266 (D.C.Cir. 1956); *Use of the Carterfone Device in Message Toll Telephone Service*, 13 FCC 2d 420 (1968). Home wiring fits within that framework. USTA agrees with the Commission's characterization of what constitutes "cable home wiring." Notice at ¶2, note 4.

Today, many cable operators remain unwilling to accept competition in aspects of video programming that will benefit the public. They refuse to open voluntarily the control they hold over broadband access to the home. Unlike local telephone companies, cable operators are not yet required to grant access to the cable wiring many claim to own in consumers' homes.

They also are not required even to permit those consumers to provide their own wiring. The Commission's goal here is correct. Consumers should be allowed to obtain the benefits of competition for the installation and maintenance of cable home wiring, including those from self-provision.

**B. Consumers Should Be Able To Access and Interconnect
With Other Services Through Cable Home Wiring.**

Even if the Commission were to require cable operators to permit the connection of privately installed cable home wiring to the cable operator's existing services under guidelines that protect other subscribers from defined "harm" and fraud, a consumer also would have to incur the cost and inconvenience of installing duplicate home wiring to receive competing services, such as those anticipated using video dial tone. Thus, consumers who would be able to benefit if they wanted new cable home wiring would still be disadvantaged if they were served by a cable operator that refused to open to competing services any in-place home cable wiring it claimed to own. Such restrictions deter competition unreasonably. From the standpoint of local telephone companies, they will unnecessarily increase the cost of video dial tone and related competing services, delaying their availability.

**II. THE COMMISSION SHOULD ADOPT RULES THAT ARE SIMILAR IN
STRUCTURE TO THE RULES FOR NARROWBAND INSIDE WIRE.**

Adapting the existing rules for narrowband inside wire to cable home wiring can address most of the competitive and other concerns of the Notice. See Detariffing the Installation and

Maintenance of Inside Wiring, 85 FCC 2d 818 (1981); 51 Fed.Reg. 8498 (March 12, 1986); on recon, 1 FCC Rcd 1190 (1986); on further recon, 3 FCC Rcd 1719 (1988); remanded sub. nom., NARUC v. FCC, 880 F.2d 422 (D.C.Cir. 1989); on remand, 5 FCC Rcd 3407 (1990); 5 FCC Rcd 3521 (1990); 7 FCC Rcd 1334 (1992).

The principles of the narrowband inside wire transition can be utilized to foster broadband access, while avoiding the pitfalls of regulatory overreaching. The Commission should promote aggressively a policy of customer ownership and control of cable home wiring. The Commission should utilize a structure that defines a network boundary and that is designed to avoid network or other "harm". The initial standards of Part 68 adequately served the telephone industry when a boundary between the network provider and the consumer originally was necessary, because it provided a cleaner line than one that might be provided by ad hoc decision making or informal guidelines. And further, if it can be fostered fully, consumer ownership of cable home wiring will avoid the cost, wasted work and disruption of replacing wiring when cable service is terminated. It will also permit consumers to use their existing cable home wiring to receive competing services, and will promote competition for wire maintenance.

III. MANDATORY ACCESS TO CABLE WIRING WITHIN THE HOME HAS UNIQUE VALUE.

Consumers and competing service providers should have access to cable home wiring even when cable service has not been terminated. Alternative providers should be permitted to connect to cable wiring at an identified point of entry into the home (or at relevant entry points in multi-tenant buildings.) Consumers should control the wiring on their side of a defined network demarcation point as part of the day-to-day control of their own dwellings they otherwise have. Mandating access will speed the deployment of video dial tone and other competing services at a lower cost to consumers, and without the disruption of rewiring their homes. It will also promote customer choice; consumers can simultaneously receive cable and other broadband services, or choose among them.

The home is a unique property in which the balance of interests tips more toward the occupant, who should be expected to be able to exert more control over his or her premises vis-a-vis third parties. In this proceeding, the Commission may find it useful to distinguish immediately between existing and newly-installed cable wiring, making the market for all newly-installed cable home wiring competitive at once, and requiring generally that, at installation, ownership must go to the person who owns the dwelling, just like electrical and other comparable wiring. Cable operators can recover the cost of new cable home wiring they install on an ongoing basis directly

from the cost causer at the home in question. They should be prohibited from activities that cause ongoing "control" or "access" problems for broadband competitors within the four walls of a home as new wiring is installed. Existing wiring in particular may need additional attention to promote access and customer ownership within the home's unique boundaries. For example, the Commission could tie its activities in related proceedings affected by the competitiveness of the cable television market in part to the degree to which cable operators are willing to participate in the unbundling and deregulation of this part of the broadband infrastructure. The failure to promote a competitive cable home wiring market would suggest that this area remains a unique point for incumbent cable operators to exert undesirable leverage.

IV. CONCLUSION.

The Commission should pursue aggressively those options that promote private ownership of cable home wiring by dwelling owners.

Respectfully submitted,

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